

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MARKET DOMINANT PRODUCT PRICES
INBOUND MARKET DOMINANT PRIME TRACKED SERVICE
AGREEMENT
NEGOTIATED SERVICE AGREEMENTS

Docket No.
MC2017-71

MARKET DOMINANT PRODUCT PRICES
INBOUND MARKET DOMINANT PRIME TRACKED SERVICE
AGREEMENT (MC2017-71 AND R2017-3)
NEGOTIATED SERVICE AGREEMENT

Docket No.
R2017-3

**REQUEST OF UNITED STATES POSTAL SERVICE TO ADD
INBOUND MARKET DOMINANT PRIME TRACKED SERVICE AGREEMENT
TO THE MARKET DOMINANT PRODUCT LIST,
NOTICE OF TYPE 2 RATE ADJUSTMENT, AND
APPLICATION FOR NON-PUBLIC TREATMENT**
(December 23, 2016)

In accordance with 39 U.S.C. §§ 3622(c)(10) and 3642, as well as 39 C.F.R. § 3010.40 *et seq.* and 3020.30 *et seq.*, the United States Postal Service (Postal Service) hereby requests that Inbound Market Dominant PRIME Tracked Service Agreement be added to the market dominant product list within the Mail Classification Schedule (MCS). The Postal Service also provides notice of a Type 2 rate adjustment, in accordance with 39 C.F.R. § 3010.40 *et seq.*, that should improve the net financial position of the Postal Service, create an incentive to enhance the performance of operational functions, and result in improvement over rates established under the Universal Postal Union (UPU) Acts for inbound Letter Post items. This notice concerns the Postal Service's signing of the PRIME Tracked Service Agreement, a multilateral agreement between postal operators about the exchange of letter post items weighing up to 2 kilograms, tendered as PRIME Tracked items and branded with a common logo.

As of December 15, 2016, it became possible for the United States Postal Service to sign the PRIME Tracked Service Agreement, and the Postal Service signed the agreement on December 21, 2016.¹

The purpose of the agreement is to upgrade participating postal operators' service to the benefit of their customers, and in certain circumstances, for the participating postal providers "to remunerate each other for the timely return of scans with an enhanced payment that will be due in addition to the basic payment they have agreed per each item."²

The Postal Regulatory Commission (Commission) previously determined in Order No. 876 that the Exprès Service Agreement that is the subject of Docket No. R2011-6 should be included within the Inbound Market Dominant Exprès Service Agreement 1 (R2011-6) product.³ In addition, the Commission recently determined in Order No. 3471 that the Registered Service Agreement that is the subject of Docket No. R2016-6 should be added to the Mail Classification Schedule as a new market dominant product, Inbound Market Dominant Registered Service Agreement 1.⁴

Taking into consideration Order No. 876 and Order No. 3471, the Postal Service requests that the Commission add Inbound Market Dominant PRIME Tracked Service Agreement as a new product within the market dominant product list in the Mail

¹ See the Postal Service's Deed of Accession to the PRIME Tracked Service Agreement, which is included as the last page of Attachment 2 of this filing.

² See Attachment 2, PRIME Tracked Service Agreement made and entered into February 2, 2017, at 1. The full text of the PRIME Tracked Service Agreement includes the PRIME Tracked Service Agreement and its seven Annexes ("PRIME Tracked Service Agreement").

³ PRC Order No. 876, Order Adding Inbound Market Dominant Exprès Service Agreement 1 to the Market Dominant Product List, Docket No. R2011-6, September 26, 2011, at 9.

⁴ PRC Order No 3471, Order Adding Inbound Market Dominant Registered Service Agreement 1 to the Market Dominant Product List and Approving Type 2 Rate Adjustment, August 17, 2016, at 9.

Classification Schedule, and add the PRIME Tracked Service Agreement that is the subject of this filing to that product grouping.

Attachment 1 is the Statement of Supporting Justification of Mico Milanovic, Manager, Regional Business Development, Global Business, United States Postal Service, which the Postal Service is including in this filing pursuant to 39 C.F.R. § 3020.32. A redacted copy of the agreement, followed by the Postal Service's deed of accession, is included in the public version of this filing as Attachment 2. Attachment 3 to this Request includes proposed MCS language for the Inbound Market Dominant PRIME Tracked Service Agreement product grouping. Attachment 4 to this filing is the Postal Service's application for non-public treatment of certain materials included with this filing. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

The full text of the agreement and supporting financial documentation are being filed separately under seal with the Commission.

I. Notice of Agreement and Rate Adjustment

A. Criteria under Part 3010, Subpart D of the Rules of Practice and Procedure

The Postal Service provides the following answers, descriptions, and affirmations in response to the criteria for contents of a notice of agreement in support of a Type 2 rate adjustment that are set forth in 39 C.F.R. § 3010.42. This statement provides support for the implementation of the Agreement and the establishment of the rates offered therein.

[A] notice of agreement that shall include at a minimum the following information:

(a) A copy of the negotiated service agreement;

- (b) The planned effective date(s) of the planned rates;*
- (c) A representation or evidence that public notice of the planned rate adjustments has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and*
- (d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.*

A copy of the PRIME Tracked Service Agreement signed by the Postal Service is being filed under seal in connection with the instant filing, as described above.

As for the planned effective date, according to Article 11 of the PRIME Tracked Service Agreement included in Attachment 2 of this filing, the Agreement enters into force on February 1, 2017, “between those Parties that have executed it by that date irrespective of how many Parties have executed it.”⁵ Thus, the intended effective date of Postal Service’s entry into the PRIME Tracked Service Agreement is on or after February 1, 2017, subject to the conditions set forth in Annex 7 of the Agreement.

Public notice of the Postal Service’s signing of the PRIME Tracked Service Agreement is being given through the instant notice, as well as the publication of a notice concerning this Request in the *Federal Register*, as required by 39 U.S.C. § 3642(d)(1). The planned rate adjustment resulting from the Postal Service’s entry into the PRIME Tracked Service Agreement includes rates for extra remuneration to the Postal Service for services performed by the Postal Service pursuant to Article 3 of the Agreement

Mico Milanovic, Manager, Regional Business Development, Global Business, will be available to provide prompt responses to requests for clarification from the Commission.

⁵ See Attachment 2, PRIME Tracked Service Agreement, at 3.

(e) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

Since the PRIME Tracked Service Agreement became open for signature on December 15, 2016, among the parties that have signed the PRIME Tracked Service Agreement are the United States Postal Service and one other party, as can be seen in Annex 6 of Attachment 2 of this filing. Attachment 2 is the copy of the PRIME Tracked Service Agreement provided to the Postal Service by the Head of PRIME, at the International Post Corporation (IPC), on December 22, 2016, followed by the Postal Service's deed of accession. The PRIME Tracked Service Agreement is a multilateral agreement between certain postal operators that concerns the exchange of letter post items weighing up to 2 kilograms, tendered as PRIME Tracked items and branded with a common logo, pursuant to Article 15 of the Universal Postal Convention. In order to upgrade the service of the postal operators that are parties to the Agreement to the benefit of their customers, the Agreement sets forth terms and conditions for the parties to the Agreement, in certain circumstances "to remunerate each other for the timely return of scans with an enhanced payment that will be due in addition to the basic payment that have agreed per each item."⁶

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

- (1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;*
- (2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;*

⁶ See Attachment 2, PRIME Tracked Service Agreement, at 1.

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement; [and]

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

The Postal Service has provided information about expected financial improvements, costs, volumes, and revenues in the financial workpapers that the Postal Service has filed under seal.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

Performance improvements that may result from the Postal Service's signing of the PRIME Tracked Service Agreement include the following.

- The Postal Service's signing of the PRIME Tracked Service Agreement will allow the Postal Service to participate in the delivery confirmation service for letter-class flats, letters, and packets bearing a barcode established by the parties to the PRIME Tracked Service Agreement.
- The Postal Service's signing of the PRIME Tracked Service Agreement creates an incentive for the Postal Service to improve mail processing and transportation because the agreement provides for remuneration for timely return of scans concerning PRIME Tracked Items.

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

This agreement will not result in unreasonable harm to the marketplace. The Postal Service and the designated postal operators of the countries that are parties to

the PRIME Tracked Service Agreement serve as their respective countries' designated operators for the exchange of mail, including in particular Letter Post, under rules set by the UPU. Designated operators ordinarily compensate one another for the delivery of Letter Post in accordance with terminal dues rates set by the Universal Postal Union, unless a bilateral or multilateral agreement is concluded.⁷ Because no other entities are in a position to serve as designated operators for the relevant types of mail either originating in the countries that are parties to the PRIME Tracked Service Agreement or destined for the United States, and because no other entities are subject to terminal dues rates with respect to inbound Letter Post sent to the United States from the countries that are parties to the PRIME Tracked Service Agreement, the market for the services offered under this agreement is in essence limited to the parties of the agreement.

(i) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

In this docket, the Postal Service is presenting only an agreement to establish a delivery confirmation service for inbound Letter Post to the United States that is tendered by certain foreign postal operators.

In addition, the last paragraph of Article 2 of the PRIME Tracked Service Agreement begins with the statement that “No Party is obliged to tender any of its outgoing cross-border mail as PRIME Tracked items.”⁸

The rates paid by the Postal Service to the other postal operators who are parties to the PRIME Tracked Service Agreement have not been presented to the Commission.

⁷ See Universal Postal Convention Article 29 ¶ 11 in UPU, Decisions of the 2012 Doha Congress, available at http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf, at 134.

⁸ PRIME Tracked Service Agreement, at 2.

Those represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its mailing customers for outbound market dominant products to be delivered in the countries whose postal operators are parties to the PRIME Tracked Service Agreement. An agreement concerning outbound market dominant services with such postal operators would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

B. Data Collection Plan

Under 39 C.F.R. § 3010.43, the Postal Service must include with its notice of agreement “a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. [§] 3622(c)(10).”⁹ The Postal Service intends to report information on this agreement through the Annual Compliance Report. The Postal Service will continue to cooperate with the Commission to provide any necessary information about mail flows from the parties of the PRIME Tracked Service Agreement within the course of the annual compliance review process. Therefore, the Postal Service proposes that no special data collection plan be created for this agreement. Furthermore, with respect to performance measurement, because this agreement concerns the provision of a delivery confirmation service with a product that is already being measured,¹⁰ the Postal Service respectfully requests that the Postal

⁹ 39 C.F.R. § 3010.43.

¹⁰ See PRC Order No. 292, Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements and Customer Satisfaction, Docket No. RM2009-11, September 2, 2009, at 15.

Service be excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3). The Commission granted similar exceptions from separate reporting for the Exprès Service agreement in Docket No. R2011-6,¹¹ for the TNT Agreement and the China Post Agreement in Docket Nos. R2010-5 and R2010-6,¹² and for the Exprès Service Agreement in Docket No. R2016-6.¹³

C. Statutory Criteria

Under 39 U.S.C. § 3622(c)(10), the criteria for the Commission's review are whether the agreement (1) improves the net financial position of the Postal Service or enhances the performance of operational functions, (2) will not cause unreasonable harm to the marketplace, and (3) will be available on public and reasonable terms to similarly situated mailers. The first two criteria have been addressed in Part IA above. With respect to the third criterion, there are no entities that are similarly situated to the designated postal operators of the countries that are parties to the PRIME Tracked Service Agreement in their ability to tender the Letter Post flows specified in the PRIME Tracked Service Agreement, from the countries that are parties to the PRIME Tracked Service Agreement, under similar operational conditions. There are also no other entities that serve as a designated operator for Letter Post originating from the countries that are parties to the PRIME Tracked Service Agreement. Therefore, the Postal Service finds it difficult to conceive of a "similarly situated mailer" to which the Postal

¹¹ PRC Order No. 876, at 8.

¹² PRC Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, Docket Nos. MC2010-35, R2010-5, and R2010-6, September 30, 2010, at 9; see also PRC Order No. 570, Order Concerning Postal Service Request for Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, Docket No. RM2010-11, September 3, 2010, at 23 (approving semi-permanent exceptions from service performance reporting for active market dominant negotiated service agreements, including the agreement for inbound market dominant services with Canada Post Corporation).

¹³ PRC Order No. 3471, at 8.

Service could make a similar agreement available for each country-specific flow.

Accordingly, the Postal Service views this criterion as inapplicable in this instance.¹⁴

Because all of the criteria set forth in 39 U.S.C. § 3622(c)(10) have been met, the Postal Service respectfully urges the Commission to act promptly by allowing the Agreement's rates to be implemented under 39 C.F.R. § 3010.40, as requested.

II. Request to Add Inbound Market Dominant PRIME Tracked Service Agreement to the Market Dominant Products List

A. Identification of Inbound Market Dominant PRIME Tracked Service Agreement

The product grouping for the Inbound Market Dominant PRIME Tracked Service Agreement is described in the attached MCS language. The grouping is similar to the MCS language for MCS section 1602.4 Inbound Market Dominant Express Service Agreement 1, which currently appears in the MCS.¹⁵ As mentioned previously, the PRIME Tracked Service Agreement is a multilateral agreement between certain postal operators that concerns the exchange of letter post items weighing up to 2 kilograms, tendered as PRIME Tracked items and branded with a common logo, pursuant to Article 15 of the Universal Postal Convention. In order to upgrade those certain postal operators' service to the benefit of their customers, the Agreement sets forth terms and conditions for the parties to the Agreement in certain circumstances "to remunerate

¹⁴ See PRC Order No. 163, Order Concerning Bilateral Agreement with Canada Post for Inbound Market Dominant Services, Docket Nos. MC2009-7 and R2009-1, December 31, 2008, at 9-10 ("Given its narrow characterization of the underlying Agreement, the Postal Service's position [as to 'similarly situated mailers'] is correct. For purposes of this proceeding, the Commission concludes that it would be largely an academic exercise to consider whether a broader characterization should be employed.").

¹⁵ See PRC, Mail Classification Schedule, posted January 15, 2016 (with revisions through October 31, 2016), available at <http://www.prc.gov/mail-classification-schedule>, at 201.

each other for the timely return of scans with an enhanced payment that will be due in addition to the basic payment that have agreed per each item.”¹⁶

The terms of the PRIME Tracked Service Agreement at issue in this proceeding fit within the new proposed MCS language included as Attachment 3 to the instant filing.

B. Filing under Part 3020, Subpart B of the Rules of Practice and Procedure

The Statement of Supporting Justification of Mico Milanovic, Manager, Regional Business Development, Global Business, is included as Attachment 1 in accordance with Part 3020, Subpart B of the Rules of Practice and Procedure. This Statement provides support for the Postal Service’s Request to add Inbound Market Dominant PRIME Tracked Service Agreement as a new product within the market dominant product list in the Mail Classification Schedule, and add the PRIME Tracked Service Agreement that is the subject of this filing to that product grouping.

Under 39 U.S.C. § 3642(b), the criteria for such review are whether the product qualifies as market dominant as a function of the Postal Service’s market power, whether it is excluded from the postal monopoly, and whether the proposed classification reflects certain market considerations. Each of these criteria has been addressed in this case. With Order No. 43, the Commission has already assigned all inbound shipments of single-piece Letter Post to the market dominant category,¹⁷ and the agreement at issue implements certain remuneration terms concerning the delivery of inbound Letter Post items that weigh up to 2 kilograms tendered as PRIME Tracked Items and branded with a common logo. A similar multilateral agreement, Inbound

¹⁶ See Attachment 2, PRIME Tracked Service Agreement, at 1.

¹⁷ PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. RM2007-1, October 29, 2007, at 99-100, ¶ 4003 (placing Inbound First-Class Mail International as a subset within the First-Class Mail class).

Market Dominant Express Service Agreement 1, which implements remuneration terms concerning the delivery of inbound Letter Post items that weigh up to 2 kilograms tendered as Express items and branded with a common logo, which was presented in Docket No. R2011-6, was determined to satisfy statutory criteria for placement on the market dominant product list.¹⁸ The additional considerations listed in 39 U.S.C. § 3642(b)(3) are addressed in Mr. Milanovic's statement. Because all of section 3642's criteria for classification have been met, the Postal Service respectfully urges the Commission to act promptly by adding this product to the market dominant products list as requested.

III. Application for Non-Public Treatment

The Postal Service maintains that certain portions of the PRIME Tracked Service Agreement, as well as related financial information should remain confidential. In accordance with 39 C.F.R. § 3007.21, the Postal Service files its application for non-public treatment of materials filed under seal as Attachment 4 to this Request. A full discussion of the required elements of the application appears in Attachment 4.

IV. Conclusion

For the reasons discussed, the Postal Service believes that the Inbound Market Dominant PRIME Tracked Service Agreement, along with the PRIME Tracked Service Agreement discussed herein should be added to the market dominant product list. The Postal Service requests that the Commission approve this Request.

As mentioned previously, as required by 39 U.S.C. § 3642(d)(1), a notice concerning this Request will be sent for publication in the *Federal Register*.

¹⁸ PRC Order No. 876.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business
Corporate and Postal Business Law Section

Christopher C. Meyerson
Attorney

475 L'Enfant Plaza, S.W.
Washington, D.C. 20260-1137
(202) 268-7820; Fax -5628
christopher.c.meyerson@usps.gov
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Statement of Supporting Justification

I, Mico Milanovic, Manager, Regional Business Development, Global Business, am sponsoring the Request that the Commission add Inbound Market Dominant PRIME Tracked Service Agreement filed in Docket Nos. MC2017-71 and R2017-3 to the market dominant product list within the Mail Classification Schedule (MCS). My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code.*

As demonstrated below and in the Request and Notice to which this statement is attached, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

The Request and Notice concern a Type 2 rate adjustment. A Type 2 rate adjustment, according to 39 C.F.R. § 3010.7, "is based on a negotiated service agreement." According to 39 C.F.R. § 3010.3(a), a Type 2 rate adjustment is authorized by 39 U.S.C. § 3622(c)(10), rather than 39 U.S.C. § 3622(d). Therefore, the requirements of 39 U.S.C. § 3622(d) do not appear to apply in this instance.

In the Request and Notice to which this statement is attached, the Postal Service has explained how Inbound Market Dominant PRIME Tracked Service Agreement complies with the applicable sub-factors in 39 U.S.C. § 3622(c)(10). The product

grouping, along with the agreement submitted in this proceeding, also are in accordance with the following objectives stated in 39 U.S.C. § 3622(b) and the following other factors stated in 39 U.S.C. § 3622(c), to the extent applicable. By negotiating with foreign postal operators through agreements such as the instrument submitted here, it is possible for the Postal Service to present prices that more accurately represent the services' costs and the value that the foreign postal operator and its customers place on the services being provided (39 U.S.C. § 3622(c) factors 1 and 7), which offer reliability and varying degrees of delivery speed (factor 9). With respect to the contract presented here, the rates in the agreement will remain in effect for the indefinite period of time established in Article 11 of the contract, thereby achieving the goal of predictability and stability for the counter-party postal operator and its customers, as well as the Postal Service (39 U.S.C. § 3622(b) objective 2).

The PRIME Tracked Service Agreement also provides the opportunity for the negotiation of scanning service performance targets and standards, development of more efficient and customized services, as well as bar code specifications and formats, which modify the requirements generally applicable to cross-border Letter Post items (39 U.S.C. § 3622(b) objectives 1 and 3 and 39 U.S.C. § 3622(c) factor 12). In addition, the PRIME Tracked Service Agreement concerns the preparation of mail, specifically in relation to the exchange of certain information in electronic form about the delivery of inbound Letter Post items and in certain circumstances to establish remuneration for the provision of information in electronic form. Some of these efficiency-improving activities may reduce the Postal Service's costs (39 U.S.C. § 3622(c) factor 5).

The revenues earned by the Postal Service under Inbound Market Dominant PRIME Tracked Service Agreement improve cost coverage for inbound flows over rates under the UPU Acts, thereby helping to promote financial stability (39 U.S.C. § 3622(b) objective 5). As a result, Inbound Market Dominant PRIME Tracked Service Agreement will promote the long-term objective of achieving adequate cost coverage (objective 9 and factor 2). The rates in the agreement provide superior cost coverage over the rates set by the UPU (objectives 5, 8, and 9 and factor 7). Both senders and recipients typically esteem Letter Post items as an option for certain personal and business correspondence. Therefore, it may be assumed that inbound Letter Post PRIME Tracked Items sent by mailers in foreign countries are of high relative value to the people and may tend to contain items with high educational, cultural, scientific, and informational value (factors 8 and 11). Alternatives to inbound Letter Post from certain foreign countries are available at reasonable cost in the form of electronic telephone, and facsimile communication, as well as Extraterritorial Offices of Exchange (ETOE) and international mail consolidators for bulk Letter Post and package delivery providers for heavier-weight Letter Post items (factor 4).

Adding Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list will promote simplicity in the MCS's structure (factor 6). The proposed classification language features simple, direct language that describes the Inbound Market Dominant PRIME Tracked Service Agreement.

If the Commission adds Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list in the MCS and permits the rates of the agreement to be implemented, the Commission will be affirming the Postal Service's

exercise of its pricing flexibility (objective 4 and factor 7) and reducing administrative burden that might impede the flow of inbound registered mail tendered by foreign postal operators (objective 6). Transparency is also enhanced through the Postal Service's submission of redacted portions of these instruments, along with the product description in the classification language through this filing, and through the annual compliance reporting process (objective 6). Finally, classification by the Commission would enable the establishment of rates that are considered to be just and reasonable by both the Postal Service and the counterparty foreign postal operators (objective 8).

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Not applicable. Section 3633 concerns rates for competitive products, and the Postal Service is proposing to add Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

Not applicable. The Postal Service is proposing to add Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

The Private Express Statutes generally prohibit entities other than the Postal Service from carrying inbound letters weighing less than 12.5 ounces, unless certain

postage has been paid or the carriage falls under certain exceptional circumstances. Therefore, a portion of the inbound Letter Post that is a subject of the agreement at issue here is considered to be within the so-called “letter monopoly” up to the weight threshold, and to the extent that a private entity would not carry the items under the exceptional circumstances set forth in the Private Express Statutes (e.g., for at least six times the current price of a one-ounce First-Class letter, or within the prescribed time guidelines for “extremely urgent” delivery).

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

Because the Postal Service and foreign postal operators serve as their respective countries’ designated operators to provide universal Letter Post service under the Universal Postal Convention, there are few alternatives for sending and receiving inbound single-piece Letter Post with delivery confirmation service, particularly for lightweight letters, from foreign countries to the United States at reasonable costs. It should be noted, however, that electronic and facsimile communication represent low-priced alternatives for some of the type of business and personal correspondence typically transmitted through Letter Post with delivery confirmation service. Also, other postal operators or consolidators compete in cross-border letter markets for bulk mail delivery. The PRIME Tracked Service Agreement at issue here, however, to a large extent pertains to single-piece, universal Letter Post with delivery confirmation service traffic, which is generally only provided by postal operators designated by their countries’ governments.

- (g) *Provide any information available on the views of those who use the product on the appropriateness of the proposed modification.*

The counter-parties to the Inbound Market Dominant PRIME Tracked Service Agreement are foreign postal operators that desire to tender inbound mail with delivery confirmation service volume to the Postal Service under the terms and conditions of the PRIME Tracked Service Agreement. The Postal Service has concluded a similar type of agreement, which the Commission classified in Docket No. R2011-6 as Inbound Market Dominant Exprès Service Agreement 1 in section 1602.4 of the Mail Classification Schedule.¹ This indicates that foreign postal operators, as well as their mailing customers, find the type of arrangement that these agreements represent to be invaluable for preserving and enhancing mail services for inbound letter items sent to the United States. However, no specific data are available to the Postal Service on foreign postal operators' or their mailing customers' views regarding the regulatory classification of this type of agreement.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The addition of Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list will likely have little adverse impact upon small business concerns. By agreeing to the rates in the PRIME Tracked Service Agreement, the Postal Service is continuing to provide foreign postal operators reliable options for mailing letters and merchandise using Letter Post service to the United States. As described in response to Part (f) above, there is little direct private competition for

¹ See Postal Regulatory Commission, Mail Classification Schedule posted January 15, 2016 (with revisions through: October 31, 2016), at 201.

inbound single-piece Letter Post with delivery confirmation service, or inbound single-piece Letter Post. So, classification of the agreement will not have significant impact on small business competitors. The Postal Service is unaware of any small business concerns that offer competing services for end-to-end delivery of single-piece, non-expedited Letter Post with delivery confirmation items on a comprehensive basis. Thus, because of the absence of negative impact on any small business competitors, as well as the positive impact on small businesses served by foreign postal operators and the Postal Service, the net impact of the PRIME Tracked Service Agreement on small businesses is positive.

- (i) *Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

The Postal Service shares the Commission's desire to achieve cost-covering rates, and the financial workpapers included in this filing indicate that the PRIME Tracked Service Agreement should cover its costs.

PRIME Tracked Service Agreement

made and entered into this 01/02/2017 by and
between the parties listed in Annex 6
(collectively the "Parties")

Witnessed:

WHEREAS the Parties are UPU-designated postal operators engaged, inter alia, in the cross-border transportation and delivery of mail, and

WHEREAS each of the Parties performs the Exprès items service pursuant to Article 15 of the UPU Convention, and

WHEREAS the Parties wish to develop this Exprès items service into a priority product with reliable track & trace features and a common logo, and

WHEREAS the Parties wish to remunerate each other for the timely return of scans with an enhanced payment that will be due in addition to the basic payment they have agreed per each item, and

WHEREAS the Parties each wish to maintain their freedom to determine pricing and conditions in respect of their customers.

Now, therefore, the Parties hereby agree as follows:

Article 1: Definitions

All terms beginning with a capital letter in this Agreement (including the Annexes) are defined either in Annex 1 to this Agreement or in the body of this Agreement and referred to in Annex 1.

Article 2: Delivery of Tracked Items

This Agreement covers the delivery of cross-border LC/AO items weighing up to 2 kg, or up to 5 kg if bilaterally or multilaterally agreed by the parties, tendered as PRIME Tracked Items and branded with the Common Logo. Such items are referred to in this Agreement as "PRIME Tracked Items".

A Party that receives PRIME Tracked Items (the "Receiving Party") from another Party (the "Sending Party") for delivery in its country shall deliver such mail in accordance with the terms of this Agreement.

PRIME Tracked Items shall be delivered in the priority stream network as foreseen in Annex 2.

Delivery information shall be available as described in Annex 2.

Parties shall comply with the response times, labelling, scanning and other service and product features as set out in Annex 2.

No Party is obliged to tender any of its outgoing cross-border mail as PRIME Tracked Items. Any Party's right to avail itself of Article 15 of the UPU Convention remains unaffected.

Article 3: Remuneration for the Delivery of PRIME Tracked Items

A Receiving Party that receives PRIME Tracked Items from a Sending Party for delivery in its country shall receive from that Sending Party [REDACTED]

[REDACTED]

[REDACTED]

Article 4: Steering Committee

The Parties shall meet when there are important topics to be discussed in the Tracked Agreement Steering Committee. [REDACTED]

[REDACTED]

[REDACTED] Tracked Agreement Steering Committee is [REDACTED]

Article 5: Common Logo

The PRIME Tracked Items service shall be marketed under the Common Logo defined in Annex 2.

Article 6: Liability

Liability of the Parties shall be ruled by Article 23 of the UPU Convention.

Article 7: Undeliverable Items

Undeliverable PRIME Tracked Items shall be returned in accordance with the UPU Letter-Post Regulations applicable to priority mail items.

Article 8: Bilateral and Multilateral Agreements

This Tracked Agreement prevails on the PRIME Exprès agreement only between or among the Parties that have signed this Tracked Agreement. This Tracked Agreement supersedes the UPU Supplementary Remuneration Program.

Parties may agree to deviate from, and/or to supplement, the provisions of this Agreement by entering into bilateral and/or multilateral agreements that involve fewer than all of the Parties, provided that such agreements bind only the Parties that enter into them. In particular, such bilateral and/or multilateral agreements may provide for different remuneration and service features applicable between or among the Parties involved.

Article 9: Contracts with Customers

This Agreement does not establish the prices that any Party charges to, and the contractual terms governing its relationship with, its customers.

Article 10: Settlement of Accounts

The Parties' claims for remuneration will be settled quarterly on a bilateral basis or at any other interval agreed by the Parties concerned.

Article 11: Term and Termination

This Agreement shall enter into force on 1 February 2017 between those Parties that have executed it by that date irrespective of how many Parties have executed it.

This Agreement is entered into for an indefinite period of time. Any Party may withdraw from this Agreement at any time after that Party's execution by [REDACTED]

[REDACTED] Such withdrawal shall take effect only at the end of the third full calendar month following receipt of the notice of withdrawal [REDACTED]

Article 12: Accessions

Without the necessity of a written instrument duly executed on behalf of all of the Parties, any other UPU designated postal operator can accede to this Agreement by executing a Deed of Accession in the form of Annex 4 and delivering it to the Head of PRIME, who will inform the Parties. The accession is subject to approval by the Tracked Agreement Steering Committee. The accession will become effective on the first day of the second calendar month following the approval of the accession by the Tracked Agreement Steering Committee. The list of Parties is referred to in Annex 6 and it is updated by the Head of PRIME each time a new Party is approved.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Article 13: Severability

If any of the provisions of this Agreement (including its Annexes) for any reason whatsoever is or becomes invalid, unenforceable, or unperformable, the legal validity of the remaining provisions of the Agreement (including its Annexes) shall in no way be affected. In that event, the Parties shall attempt in good faith to reach agreement to replace the invalid, unenforceable, or unperformable provision with a new provision that comes as close as possible to achieving the original intent of the invalid, unenforceable, or unperformable provision.

Article 14: Annexes - Entire Agreement

The Annexes referred to in this Agreement are an integral part of this Agreement. This Agreement, together with the Annexes hereto, constitutes the entire agreement and understanding between the Parties.

Article 15: Headings

Headings in this Agreement are inserted for convenience only and are not to be considered part of this Agreement.

Article 16: Assignment - Successors

This Agreement may not be assigned by any Party without the prior written consent of the simple majority of all other then-current Parties. All the terms and provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors.

Article 17: Arbitration

Any disputes arising out of or in connection with this Agreement shall be finally and bindingly resolved by an arbitration committee (the "Arbitration Committee"). The laws of The Netherlands shall apply. The members of the Arbitration Committee shall be independent of Parties to the dispute. Each Party or group of Parties involved in the dispute shall appoint an arbitrator within one month of notifying the Head of PRIME of the dispute or of being informed of such a notification by the Head of PRIME. If any of the Parties to the arbitration fails to do so, the Tracked Agreement Steering Committee shall appoint an arbitrator within a further month.

The arbitrators thus appointed shall have one month from the day on which the last of them was appointed to appoint another arbitrator to chair the Arbitration Committee. If they fail to do so, the Tracked Agreement Steering Committee shall appoint this arbitrator within a further month.

The Arbitration Committee shall render its decision within two months of its constitution. Its decision will be binding on the Parties involved in the dispute. The arbitration proceedings shall be conducted in the English language.

The Arbitration Committee shall decide which Party or Parties shall bear its costs.

Article 18: Amendment

This Agreement may be amended by the Parties at any time, but only by a written instrument, duly executed on behalf of all of the then-current Parties. Notice of the executed amendment shall be sent to the Head of PRIME, who will inform the Parties.

In addition, the Tracked Agreement Steering Committee is empowered to amend the Annexes to this Agreement. Amended Annexes shall be distributed promptly to all Parties of the Agreement.

Article 19: Governing Law

This Agreement shall be governed by and construed in accordance with the laws of The Netherlands.

Article 20: Notices

All notices, requests, and other communications permitted or required to be given under this Agreement shall be in writing in the English language and shall be signed by a person duly authorized to provide such notice.

Notices shall be given by (a) registered or certified mail, with Advice of Receipt requested, (b) private courier service, or (c) email with read confirmation addressed to the address of the Head of PRIME or at such other addresses as the Head of PRIME may designate by like notice from time to time.

Such notices shall be deemed to have been given upon receipt.

Article 21: Confidentiality

The Parties to this Agreement acknowledge that any information included in this Agreement, including rate information and information concerning the quality of service performance under this Agreement, constitute commercially sensitive information and should not be disclosed to third parties except as required by law.

Article 22: Transfer of Personal Data between the Parties

For the purpose of this Agreement, the transfer of Personal Data shall be subject to the prior signature of a bilateral or of a multilateral agreement between the Parties concerning the transfer of Personal Data, such as an agreement for the electronic exchange of customs data

In witness whereof, the Parties have caused this Agreement to be duly executed and delivered as of the date first above written.

List of Annexes

Annex 1:	Definitions
Annex 2:	Technical Specifications
Annex 3:	Remuneration
Annex 4:	Deed of Accession
Annex 5:	Trademark Agreement
Annex 6:	List of Parties
Annex 7:	USPS Participation

Annex 1: Definitions

Agreement

PRIME Tracked Service Agreement dated 1 February 2017.

Arbitration Committee

Has the meaning attributed to it in Article 17.

Common Logo

Has the meaning attributed to it in Article 5 and Annex 2.

Deed of Accession

Deed to be executed by a UPU-designated postal operator wishing to accede to the Agreement.

Enhanced Payment

Has the meaning attributed to it in Article 3 and Annex 3.

Head of PRIME

The person who is responsible for managing the PRIME activities and the PRIME Management Team.

LC/AO

LC: In the classification system based on contents, abbreviation used to refer to letters and postcards. As regards conveyance, includes aerogrammes and money orders, COD money orders and advices of receipt/of delivery/of payment and of entry.

AO: In the classification system based on contents, abbreviation used to refer to other items (printed matter, literature for the blind, small packets), as opposed to LC.

Parties

The parties having entered into the Agreement.

Personal Data

Personal Data shall be as defined in the applicable bilateral or multilateral agreement between the Parties concerning the transfer of personal data, such as an agreement for the electronic exchange of customs data.

PREDES

Pre-Advice of Dispatch

PRIME

About 141 Designated Postal Operators working together in the tracked packet area.

PRIME Tracked Items

Has the meaning attributed to it in Article 2.

Ready Reckoner

Official document to assist the settlement of accounting among PRIME members.

Receiving Party

Has the meaning attributed to it in Article 2.

RESDES

Response from the destination operator to a PREDES message.

Sending Party

Has the meaning attributed to it in Article 2.

Steering Committee

Has the meaning attributed to it in Article 4.

Trademark Agreement

Has the meaning attributed to it in Article 5 and Annex 5.

UPU

Universal Postal Union.

UPU Convention

The Universal Postal Convention. References in the Agreement are to the Articles of the UPU Convention currently in force, as revised by the 2012 Doha Congress. As later Universal Postal Conventions enter into force, these references are to be read as to the corresponding portions of the language Articles in those conventions even though the numbering of such portions within the Convention have been subsequently recast or otherwise changed by the UPU.

UPU Letter-Post Regulation

The Universal Postal Union Regulations then in force, for the exchange of cross-border mail. References in the Agreement are to the Regulations as revised following the 2012 Doha Congress. As later revisions enter into force, these references are to be read as to the corresponding Articles in the most recent version even though the numbering may be different.

Annex 2: Technical Specifications

1 – Processing of PRIME Tracked Items

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2 – Barcode and messaging

The barcode and messaging must conform to UPU standards, as contained in the UPU's S10 manual and amended from time to time. All messages should be sent in EDI format defined by the UPU.

3 – Common Logo

The PRIME Tracked Items shall be marketed under the following common logo (the "Common Logo"), in accordance to Article 5 of the Agreement:

PRIME Tracked Service Agreement



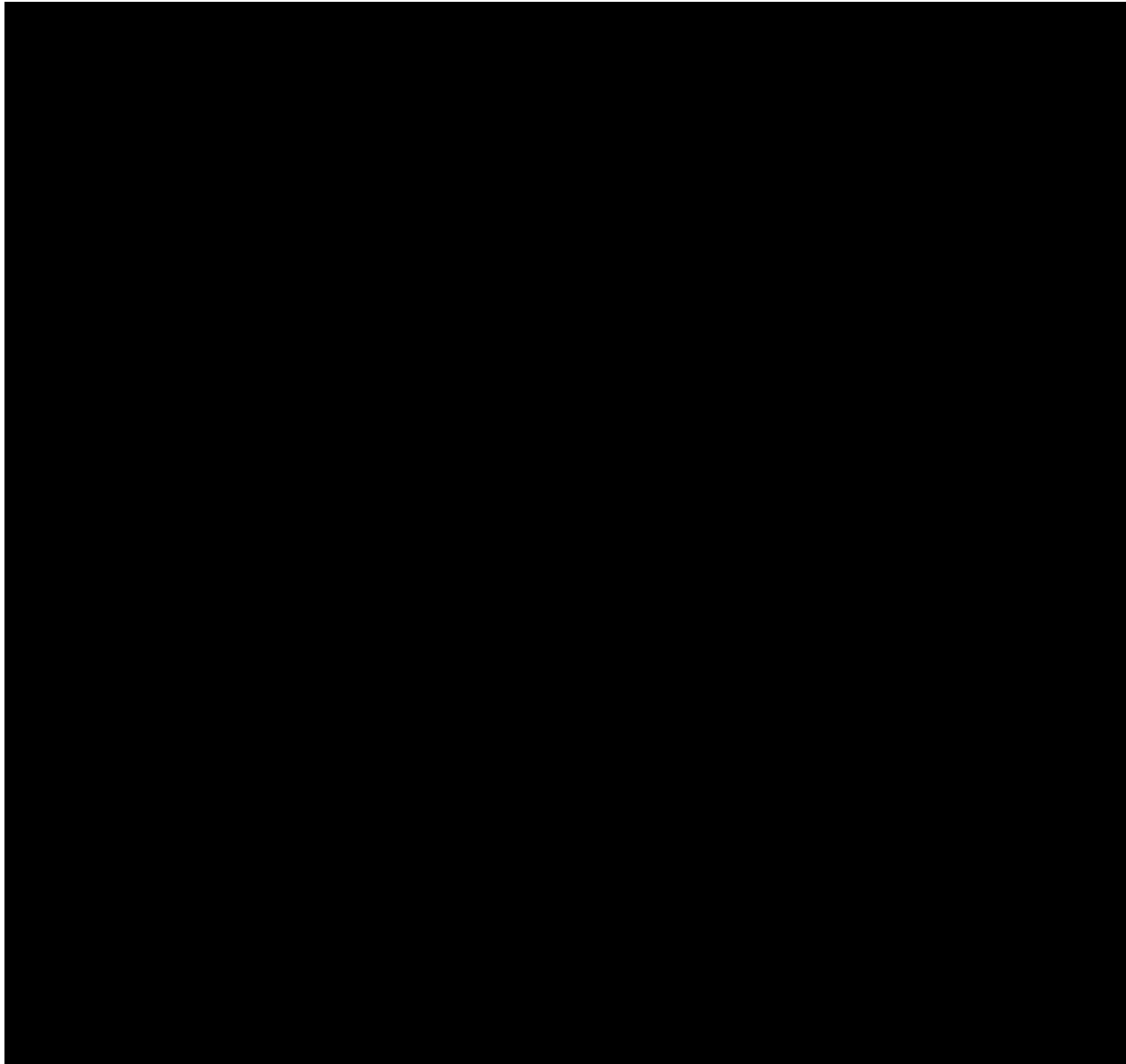
All Parties, except those who choose not to use the PRIME Tracked Items service for outgoing cross-border mail, shall execute the Trademark Co-operation Agreement made and entered into on December 23, 1999.



Exprès_agreement_
Annex_4b_Trademar

Annex 3: Remuneration

This annex establishes the Enhanced Payment remuneration applicable to the PRIME Tracked product. This Annex is applicable as of 1 February 2017, [REDACTED]
[REDACTED]



PRIME Tracked Service Agreement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Annex 4: Deed of Accession***THE UNDERSIGNED "ACCEDING PARTY"***

[name of the postal operator],

requests admission to the PRIME Tracked Service Agreement dated 1 February 2017.

The accession is effective and binding upon the undersigned Acceding Party from the first day of the second calendar month following the approval of the accession by the Tracked Agreement Steering Committee according to Article 12.

If so approved, the Acceding Party agrees to be bound by all of the provisions of such PRIME Tracked Service Agreement.

Signed at on

UPU Designated Postal Operator (DPO) - Name
.....
DPO's Authorized Representative
Name
Signature

Annex 5 Trademark Agreement



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Annex_4b_Trademar

Annex 6: List of Parties

United States Postal Service

[REDACTED]

United States of America

[REDACTED]

**Annex 7: The United States Postal Service's
Participation in the PRIME Tracked Service Agreement**

1. If the Conditions Precedent described in Paragraph 2b of this Annex are not fulfilled, [REDACTED]

[REDACTED] If the USPS becomes a party to this Agreement, and the USPS deposits a notice of withdrawal with Head of PRIME in accordance with Article 11 of the Agreement, [REDACTED]
[REDACTED]
[REDACTED]

2. USPS, IPC, and the parties to this Agreement acknowledge that USPS's participation in this Agreement is subject to the following conditions, as well as any additional conditions that the USPS may propose upon further review of this Agreement:

a. All taxes and duties are the sole responsibility of the PRIME party to whom they are duly assessed and shall not be charged to the USPS in any form unless the USPS otherwise provides in a written agreement with the respective PRIME party.

b. USPS's acceding to this Agreement and all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") one or more internal and external bodies that have oversight responsibilities over the USPS. Conditions Precedent may include but are not limited to: approvals or, if applicable, non-objection, from the USPS's management, the Governors of the USPS, the Board of Governors of the USPS, and the U.S. Postal Regulatory Commission. The USPS, IPC, and the parties to this Agreement acknowledge that this Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under this Agreement, no obligation in relation to the USPS shall exist for the USPS, IPC, and the parties to this Agreement, and no benefit or rights granted shall inure to the USPS, IPC, and the parties to this Agreement in relation to the USPS until such time as the Conditions Precedent shall have been fulfilled.

c. In the event that the Conditions Precedent are not fulfilled, the USPS, IPC, and the parties to the Agreement shall have no liability, which shall include no obligation to pay fees or costs associated with any action taken by the USPS, IPC, and the parties to this Agreement. Further, in the event of termination of this Agreement or the failure of any Condition Precedent, the USPS, IPC, and the parties to this Agreement shall not be held liable for any damages or costs of any nature whatsoever.

d. The USPS, IPC, and the parties to this Agreement acknowledge that any rate information included in this Agreement and information concerning the quality of service performance under this Agreement constitute commercially sensitive information and should not be disclosed to third parties except as required by law. USPS, IPC and the other parties to this Agreement will treat as confidential and not

disclose to third parties, absent express written consent of the other parties, any such information related to this Agreement as long as it is treated as non-public by the U.S. Postal Regulatory Commission. USPS, IPC and the other parties to this Agreement acknowledge that United States law may require that this Agreement be filed with the U.S. Postal Regulatory Commission and the U.S. Department of State. In addition, the USPS may be required to file information in connection with this Agreement in Commission dockets, including the U.S. Postal Regulatory Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which "201#" signifies the USPS fiscal year to which the ACR pertains. USPS, IPC and the other parties to this Agreement authorize the USPS to determine the scope of information that must be made publicly available under the U.S. Postal Regulatory Commission's rules. USPS, IPC and the other parties to this Agreement further understand that any unredacted portion of this document or the text of this Agreement may be posted on the Commission's public website, www.prc.gov. IPC and the other parties to this Agreement have the right, in accordance with the U.S. Postal Regulatory Commission's rules, to address confidentiality concerns directly with the U.S. Postal Regulatory Commission. The procedure for making an application to the U.S. Postal Regulatory Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Postal Regulatory Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf. At the request of IPC or the parties to this Agreement, the USPS will furnish notice of the docket number of the U.S. Postal Regulatory Commission proceeding, if any, used in connection with this Agreement(s). The USPS, IPC and the parties to this Agreement shall each provide the same care to avoid disclosure or unauthorized use of the confidential information as each would provide to maintain the confidentiality of its own information

e. The USPS, IPC, and the parties to this Agreement acknowledge that all rights, title, and interest to the trademark and logo(s) for POST EXPRES within the United States of America, including U.S. Trademark Registration Nos. 3,072,352 and 4,288,143, together with any goodwill symbolized by the trademark and logo(s), belong to the USPS. The USPS, IPC, and the parties to this Agreement further agree to assign and cooperate in assigning to the USPS, after the USPS has become a party to this Agreement and at the expense of the USPS, the entire rights, title, and interest within the United States of America to any trademark(s) and logo(s) included in this Agreement, together with any goodwill symbolized by the trademark(s) and logo(s). IPC agrees to execute all documents necessary to effectuate such assignment upon the USPS's execution of applicable agreements.

3. If and when the USPS becomes a party to any of this Agreement, IPC and the parties to this Agreement shall be deemed to have acknowledged the contents of this document.

Annex 4: Deed of Accession***THE UNDERSIGNED "ACCEDING PARTY"***United States Postal Service.

requests admission to the PRIME Tracked Service Agreement dated 1 February 2017.

The accession is effective and binding upon the undersigned Acceding Party from the first day of the second calendar month following the approval of the accession by the Tracked Agreement Steering Committee according to Article 12.

If so approved, the Acceding Party agrees to be bound by all of the provisions of such PRIME Tracked Service Agreement.

Signed at Washington, D.C., USA on December 21, 2016

UPU Designated Postal Operator (DPO) - Name

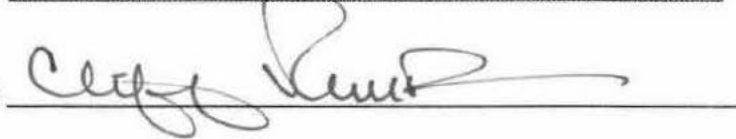
United States Postal Service

DPO's Authorized Representative

Name Cliff Rucker

Senior Vice President, Sales and Customer Relations

Signature



1602.6 Inbound Market Dominant PRIME Tracked Service Agreement

Reference

Docket No. MC2017-71 and R2017-3

PRC Order No. [], [Month Day, Year]

Expires

Ongoing

ATTACHMENT 4

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,¹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to the Postal Service's request to add an Inbound Market Dominant PRIME Tracked Service Agreement to the market dominant product list in the Mail Classification Schedule, and to include the PRIME Tracked Service Agreement within that product. The PRIME Tracked Service Agreement and supporting documents establishing compliance are being filed separately under seal with the Commission. A redacted copy of the PRIME Tracked Service Agreement is filed with the Notice as Attachment 2. In addition, a redacted version of the supporting financial documentation is included with this public filing as separate Excel files.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3)

¹ PRC Order No. 225, Final Rule Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

and (4).² Because the portions of the materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support the Postal Service's determination that these materials are exempt from public disclosure and requests the Commission to grant the Postal Service's application for their non-public treatment.

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of the instant Agreement, the Postal Service believes that the only third parties with a proprietary interest in the materials are the International Post Corporation (IPC) and the other parties to the PRIME Tracked Service Agreement. Through Paragraph 2d of Annex 7 of the PRIME Tracked Service Agreement that concerns the Postal Service's participation in the Agreement, the Postal Service has already informed the IPC and the other parties to the PRIME Tracked Service Agreement, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and the IPC's and the parties to the PRIME Tracked Service Agreement's ability to address their confidentiality concerns directly with the Commission. Because of language and cultural differences as well as the sensitive nature of the Postal Service's rate relationship with the

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

affected foreign postal operators, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices to the relevant postal operators. The Postal Service identifies as an appropriate contact person Mr. Mico Milanovic, Manager, Regional Business Development, Global Business, United States Postal Service, 475 L'Enfant Plaza SW, Room 5301, Washington, DC 20260. Mr. Milanovic's telephone number is 202-268-5348 and his e-mail address is mico.milanovic@usps.gov.³

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

In connection with its Notice filed in this docket, the Postal Service included a copy of the PRIME Tracked Service Agreement and financial workpapers associated with the Postal Service's signing of the PRIME Tracked Service Agreement. These materials were filed under seal, with redacted copies filed publicly, after notice to the IPC and the parties to the PRIME Tracked Service Agreement. The Postal Service maintains that the redacted portions of the PRIME Tracked Service Agreement and related financial information should remain confidential.

With regard to the copy of the PRIME Tracked Service Agreement filed in this docket, the redactions to the text of the main part of the agreement and to Annex 2, Annex 3, Annex 6, and Annex 7 withhold the rate information included

³ The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

in the PRIME Tracked Service Agreement and information concerning the quality of service performance and delivery time under the PRIME Tracked Service Agreement, as well as certain negotiated terms.

With regard to the financial workpapers associated with the Postal Service's signing of the PRIME Tracked Service Agreement filed in this docket, the redactions applied to the financial workpapers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections.

To the extent practicable, the Postal Service has limited the redactions described above to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b)

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the portions of the PRIME Tracked Service Agreement that the Postal Service determined to be protected from disclosure because of their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that the Postal Service would suffer commercial harm. Information about negotiated pricing and quality of service performance information is commercially sensitive, and the Postal Service does not believe that such information would be disclosed under good business practices. Foreign postal operators that are not parties to the PRIME Tracked Service Agreement could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. Competitors could also use the information to assess the terms that apply to the Postal Service under the PRIME

Tracked Service Agreement, to locate any possible comparative vulnerabilities, and to focus sales and marketing efforts on those areas, to the detriment of the Postal Service. This latter concern applies to the extent that the prices in the filed Agreement cover market dominant services for which competition exists, and monopoly letters to the extent that competing providers are not fully cognizant of or compliant with the Private Express Statutes. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial workpapers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of performance metrics, variables, and contingency rates included to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine statutory, regulatory, and policy constraints within which the Postal Service is operating. Competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could negatively affect the Postal Service in certain inbound delivery services markets. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the Agreement or from the information in the workpapers whether additional margin

for net contribution exists under the agreement's prices. The settlement charges between the Postal Service and the other Parties to the PRIME Tracked Service Agreement constitute costs underlying the postal services offered to each postal operator's customers. Disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs. From this information, each foreign postal operator or customer could also attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Foreign postal operators who are parties to the PRIME Tracked Service Agreement could use the information in the workpapers in their negotiations with the Postal Service.

Price information in the PRIME Tracked Service Agreement and financial spreadsheets also consists of sensitive commercial information of the foreign postal operators that are parties to the PRIME Tracked Service Agreement. Disclosure of such information could be used by competitors of these foreign postal operators to assess each of these foreign postal operator's underlying costs, and thereby develop a benchmark for the development of a competitive alternative. The foreign postal operators that are parties to the PRIME Tracked Service Agreement would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of their supplier costs.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the prices in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin below the rates provided under the PRIME Tracked Service Agreement. The other postal operator then uses the publicly available rate information to insist that it must receive lower rates for a similar service.

Harm: Public disclosure of information in the financial workpapers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains unredacted versions of the financial workpapers from the Postal Regulatory Commission's website. The competing delivery service analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. The competing delivery service then sets its own rates below that threshold for products similar to what the Postal Service offers its customers and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or several of the Postal Service's competitors acting in a likewise fashion, could significantly cut into the revenue

streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the foreign postal operator's underlying costs for the corresponding products. The competitor uses that information as a baseline to negotiate with U.S. companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-public materials. This includes the other current parties to the PRIME Tracked Service Agreement with respect to all materials filed under seal except for the text of the PRIME Tracked Service Agreement, to which other parties to the PRIME Tracked Service Agreement already have access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.